

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. Nos.16006 and 16007 of 2015 and M.P. Nos.1 of 2015

S. Tamilselvi
S. Maadhu

Petitioner in W.P.No.16006 of 2015
Petitioner in W.P.No.16007 of 2015

Vs.

1. The Government of Tamil Nadu
rep by its Secretary
Revenue Department
Fort St. George
Chennai-600 009
2. The District Collector
Collectorate Compound
Salem
3. The Tahsildar
Taluk Office
Shevapet
Salem-636 002
4. The Executive Officer,
Elampillai Town Panchayat,
Elampillai, Salem District.

.. Respondents in both
WPs

Petitions filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records relating to fourth respondent's impugned order issued in Na.Ka.No.387/2007 dated 10.2.2015 and quash the same by directing the respondents not to disturb the peaceful possession and enjoyment of house constructed in S.No.23/3 to an extent of 2100 sq.ft. and 1,000 sq.ft. respectively in Door Nos.164 and 166 (in WP No.16006 of 2015) and Door No.165 (in WP No.16007 of 2015).

For petitioner in
both the WPs

Mr.S.R.Balasubramaniam

For RR 1-3 in
both the WPs

Mr. P.S. Sivashanmugasundaram
Special Government Pleader

For R4 in
both the WPs

Mr. K. Karthikeyan, Govt. Advocate

COMMON ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for respondents 1 to 3. Mr. K. Karthikeyan, learned Government Advocate, accepts notice for the fourth respondent. With the consent of the learned counsel for the parties, the writ petitions are taken up for final disposal.

2 Being aggrieved by the notices dated 10.02.2015 issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 (for short "the Act"), the petitioners have come up with these writ petitions, seeking to quash the same on the ground that no opportunity of hearing was afforded to them before directing them to remove the encroachment by demolishing the alleged unauthorised structure.

3 It is contended by the learned counsel for the petitioners that the petitioners were in peaceful possession of the properties, in question for a long period. Without affording an opportunity of hearing, all of a sudden, the petitioners have been directed to vacate the premises, in question and also to demolish the same, as according to the authorities, the premises in question were on the Government land.

4 The notices in question have been issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. Section 7 of the Act contemplates service of notice on the person reputed to be in unauthorised occupation of land being the property of the Government. It also contemplates that the notice should specify the land so occupied and calling on the encroacher to show cause as to why he should not be proceeded against under Section 6 before a certain date. However, the first proviso provides that no such notice shall be necessary in the case of any person unauthorizedly occupying the land, if he had been previously evicted from such land under Section 6 of the Act or if he has previously vacated such land voluntarily after the receipt of a notice under Section 5-B of the Act.

5 On perusal of the notice, it is noticed that there is no reference about the fact that the petitioners have been either previously evicted, pursuant to the order under Section 6 or have vacated after the receipt of notice under Section 5-B or under the provisions of the Act. Though, at this stage, the petitioners, even if they are in unauthorised occupation, cannot be directed to vacate the encroachment without affording an opportunity of hearing to them before passing an order under Section 6 of the Act.

6 Accordingly, we direct the authorities to consider the representation/reply filed by the petitioners, if any, pursuant to the impugned notice and pass an order thereafter under Section 6, on its own merit and according to law. It is, thereafter, open to the authorities to take appropriate action as provided under the provisions of the Act. The petitioners, on their request, are granted two weeks' time to file their reply/representation to the impugned notices, from the date of receipt of a copy of this order. Thereafter, further two weeks time is granted to the authorities to consider the same and take appropriate action on merits and according to law.

7 Accordingly, these writ petitions are disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

cad

To

- 1 The Secretary
Revenue Department
Government of Tamil Nadu
Fort St. George
Chennai-600 009

2. The District Collector
Collectorate Compound
Salem

3. The Tahsildar
Taluk Office
Shevapet
Salem-636 002

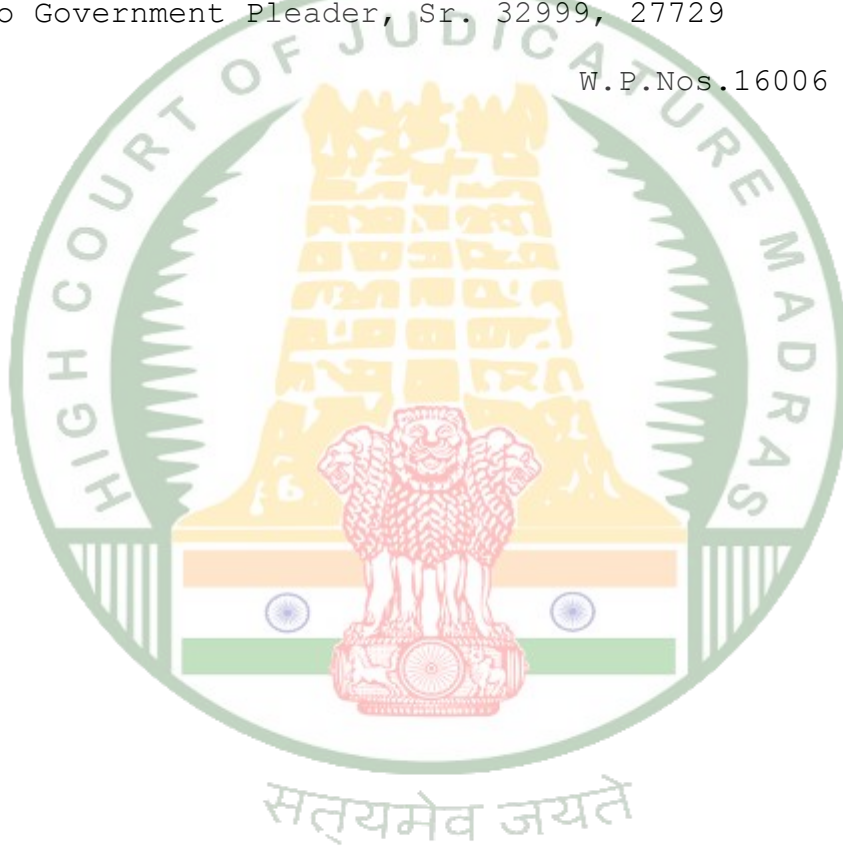
4. The Executive Officer
Elampillai Town Panchayat
Elampillai, Salem District

1 cc to Mr.S.R.Balasubramaniam, Advocate, Sr. 32436

2 ccs to Government Pleader, Sr. 32999, 27729

W.P.Nos.16006 and 16007 of 2015

SR (CO)
kk 14/7



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